

**Twelfth Meeting of European Labour Court Judges
Budapest, 8 et 9 septembre 2004**

Do we need labour courts?

Questionnaire

**General Reporter: M. Pierre SARGOS
President de la chambre sociale de la Cour de cassation,
France**

**National Reporter: Judge Steven Adler, President, National Labour Court,
Israel**

1. Is there a specialized jurisdiction for labour conflicts in your country?

Yes The Labour Courts were founded in 1969 pursuant to the Labour Courts Act.

No _____

2. If such a jurisdiction exists, what is its competence? Does it have competence for:

Collective labour conflicts? Yes

Individual labour conflicts? Yes

Any other area of possible competence? If so, please indicate.

The labour courts of Israel have jurisdiction over all social security matters, mandatory and voluntary. They also have jurisdiction of workers and work related disputes in the public and private sectors, including, for example disputes involving equality-at-work laws, and covenants not to compete. The courts also hear criminal labour cases and criminal work safety cases. As a whole, the labour court system has very broad jurisdiction and hears cases both public and private, collective and individual, criminal and civil, so long as they involve a labour matter.

3. Is this competence exclusive, or can some tribunals (other than labour tribunals) also be accessed?

Exclusive competence

Shared competence with ordinary courts

No, except for some criminal cases such as those involving work safety.

4. Is it a first instance jurisdiction (as in France, where the conseils des prud'hommes were created in 1806)? What is its composition?

The overall structure of the labour courts is two-tiered. There are five regional courts of first instance located throughout the country. Each hearing panel is comprised of one professional and two lay judges. One lay judge is from the labour sector and the other is from the management sector. There is one National Labour Court that sits in Jerusalem, which hears appeals from the regional courts' judgments and which has original jurisdiction in nation wide or industry wide collective disputes. In the latter instance, the National Court sits with three professional judges and four lay judges.

5. In the case of appeal, is there a labour court also? What is its composition?

The National Labour Court hears appeals from the Regional Courts. Most appeals are by right but some Regional Court judgments can be appealed only if the National Court gives permission. As the Court of Appeals, the National Court sits in panels of three professional and two lay judges.

6. Is there a labour court at the highest level (similar to cassation)? What is its composition?

There is no appeal from decisions of the National Labour Court. However, petitions may be filed with the Supreme Court of Israel, sitting in its capacity as the High Court of Justice, for review of National Labour Court judgments. In general, such petitions are heard in cases involving an important constitutional issue or question of general law. As a matter of practice, only a few such substantial judgments are handed down from the Supreme Court each year in labour or social security cases.

7. What was the reasoning behind the creation of the labour jurisdiction: When did it take place?

The labour court system was created by Knesset, Israel's Parliament, in 1969 by the Labour Courts Act. The court system was contemplated and requested by labour and management pursuant to a collective bargaining agreement signed in 1967 by the country's largest union, Histadrut, and the Manufacturer's Association. The Knesset granted the joint request with the purpose of creating a Labour Court System that would:

- provide expertise for labour issues, particularly collective bargaining disputes;
- set workplace standards;
- limit strikes;
- allow quicker and simpler hearings;

- allow workers to represent themselves without attorneys due to the simpler procedures; and,
- provide a pragmatic approach to work place disputes *via* the use of lay judges.

8. What is the dominant opinion of the "working" of the labour jurisdiction? Are there any plans to reform it, and if so please give details.

The labour court system receives wide spread support. However, the offices of the Treasury and State's Attorney have spun some criticism of the labour court system because of judgments they found unfavorable to their interests. A public commission is currently studying a proposal to reform the labour courts. Most proposals favor the continuation of the labour courts system in its current framework and organization.

9. Particularly in countries where the competence to deal with individual labour conflicts is given to the ordinary judge, is there a movement tending to say that it would be more justified that this competence be given to the labour judge?

Not applicable; however, over the years, jurisdiction has been transferred from the general courts to the labour courts.

10. Particularly in countries where the competence to deal with individual labour conflicts IN APPEAL is given to the ordinary judge, is there a movement tending to say that it would be more justified that this competence be given to the labour judge?

Not applicable.

11. In the event that labour courts do not exist in your country, is their creation foreseen? If so, in what form?

Not applicable.

12. Is there a preliminary procedure of conciliation to be followed before the first instance labour court can be accessed?

At the first instance, there are pretrial procedures. Pretrial procedure in the labour courts is more flexible than in the general courts and is largely comprised of non-binding "judge's rules." A comprehensive description of the system will be presented in a paper about Case Management. Following, is a summary of the procedure followed prior to a regular hearing:

- 1) After the case is filed, a case management attorney, supervised by a Registrar does a preliminary check of the Complaint to determine jurisdictional, other technical matters, basic issues involved. Then, the Defendant is ordered to submit his Answer. When the Complaint and Answer are in the file the case management attorney decides which "track" to continue the case (usually mediation, sometimes pretrial hearing before a Registrar or Judge and sometimes directly to trial). When the pleadings are in an order is given requiring all parties to submit their direct testimony in affidavit, together with all documents they intend to submit during the hearing.
- 2) If the case is heard at pretrial by the Registrar or Judge. If the case is not settled a trial time is set, including an estimate of the time required on the Court calendar.
- 3) The same is true when an agreement is not reached in mediation - the case returns to the Case Management Attorney sets the trial date.

There is no mandatory procedure of conciliation or settlement conference. However, the Labour Courts have an extensive ADR program, including mediation and ENE (early neutral evaluation) for labour law cases. If the case is assessed as suitable for mediation, it is done either by a public representative (from the union or management sector) or a private mediator.

The procedure for social security cases is similar, except that instead of sending the cases to mediation they are sent to Early Neutral Evaluation. In this process, the parties meet with an expert, generally a lawyer, sometimes a judge, for an "expert opinion" what he thinks the court will decide. This helps the parties assess the risk of going forward with hearing rather than settling or otherwise disposing of the case.

Currently, the implementation of mandatory mediation is being considered.

13. Is there a particular procedure ensuring access to the specialized jurisdiction at any instance (1st or 2nd instance, or cassation)? If so, please explain its particularities or are normal procedures followed?

No, the labour courts have exclusive jurisdiction in labour cases.

14. Do you have any further comments to add?

The Labour Courts are the main - and perhaps only - body which does mediation in collective labour disputes. This is done in suits where a party files a complaint and, during the hearing, the Court suggests the parties continue negotiation and suspend the strike or other collective action. It is sometimes done by issuing an injunction or court order and sometimes by agreement.